

MAR 13 2019

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**Via Certified Mail –
Return Receipt Requested**

March 8, 2019

Kevin Woodhouse, City Manager
Members of the City Council
City of Pacifica
City Hall
170 Santa Maria Avenue
Pacifica, CA 94044

Louis C. Sun, P.E., Deputy Director of Public Works
- Wastewater Division
Head of Agency
Calera Creek Water Recycling Plant
700 Pacific Coast Highway
Pacifica, CA 94044

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution
Control Act (Clean Water Act)

Dear Mr. Woodhouse, Members of the City Council, Mr. Sun and Head of Agency:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch (“River Watch”) with regard to violations of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1251 et seq., that River Watch alleges are occurring through the City of Pacifica’s ownership and operation of the Calera Creek Water Recycling Plant (“Facility”) and its associated sewer collection system.

River Watch hereby places the City of Pacifica (“Discharger”) as owner and operator of the Facility and associated collection system, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the Discharger for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, San Francisco Bay, Water Quality Control Plan (“Basin Plan”), as the result of violations of the Discharger’s National Pollution Discharge Elimination System (“NPDES”) Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, which has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in an NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition such that violation of a permit term or condition places a discharger in violation of the CWA. River Watch alleges the Discharger is in violation of the CWA by violating the terms of its NPDES permit.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency (“EPA”) to a state or to a regional regulatory agency provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria, see 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board (“SWRCB”) and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the Discharger’s operations in the region at issue in this Notice is the Regional Water Quality Control Board, San Francisco Bay Region (“RWQCB-SF”).

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute, see CWA § 505, 33 U.S.C. § 1365. River Watch is exercising such citizen enforcement to enforce compliance by the Discharger with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated

River Watch contends the order being violated is NPDES No. CA0038776, SWRCB Order No. R2-2017-0013 which is superseded by Order No. R2-2012-0002, collectively referred to hereafter as the “NPDES Permit.” River Watch has identified specific violations of the NPDES Permit by the Discharger including raw sewage discharges and failure to either comply with or provide evidence that the Discharger has complied with all the terms of the NPDES Permit.

2. The Activity Alleged to Constitute a Violation

River Watch contends that from February 01, 2014 through February 01, 2019, the Discharger has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

A. Sanitary Sewer Overflows, Inadequate Reporting, and Failure to Mitigate Impacts

i. Sanitary Sewer Overflow Occurrences

Sanitary Sewer Overflows (“SSOs”), in which untreated sewage is discharged above-ground from the collection system prior to reaching the Facility, are alleged to have occurred both on the dates identified in California Integrated Water Quality System (“CIWQS”) Interactive Public SSO Reports, and on the dates when no reports were filed by the Discharger, all in violation of the CWA.

The Facility’s aging sewer collection system has historically experienced high inflow and infiltration (“I/I”) during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure, causing SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains connected to adjacent surface waters including San Pedro Creek, Calera Creek, Pacifica State Beach and the Pacific Ocean – all waters of the United States.

A review of the CIWQS Spill Public Report – Summary Page identifies the “Total Number of SSO locations” as 146, with 1,072,240 “Total Vol. of SSOs (gal)” discharged into the environment. Of this total volume, the Discharger admits at least 1,048,772 gallons, or 97% of the total, reached a surface water. These discharges pose both a nuisance pursuant to California Water Code § 13050(m) as well as an imminent and substantial endangerment to health and the environment.

A review of the CIWQS SSO Reporting Program Database specifically identifies 16 recent SSOs reported as having reached a water of the United States, identified by Event ID numbers 846274, 843609, 832908, 832529, 831609, 831497, 831496, 830764, 822870, 822645, 821087, 820757, 811365, 811360, 811357, and 811355. Included in the 16 reported SSOs are the following incidents:

February 20, 2017 (Event ID# 832908) – (Coordinates: 37.59574-122.50341) an SSO estimated at 47,000 gallons occurred at the Linda Mar Lift Station as a result of “flow exceeding capacity”, all of which reached Pacifica State Beach due to the manhole overflowing.

January 08, 2017 (Event ID# 831497) – (Coordinates: 37.59549-122.50375) an SSO estimated at 78,910 gallons occurred at 500 Linda Mar Boulevard as a result of “flow exceeding capacity.” The entire volume spilled into Pacifica State Beach due to the manhole overflowing.

December 11, 2014 (Event ID# 811365) – an SSO estimated at 124,500 gallons occurred at Anza Drive at Arguello Boulevard caused by “surcharged system due to rainfall from a heavy storm.” The entire volume spilled into Pacifica State Beach due to the manhole overflowing.

All of the above-identified discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), in that they are discharges of a pollutant (sewage) from a point source (sewer collection system) to a water of the United States without complying with any other sections of the Act. Further, these alleged discharges are violations of the NPDES Permit, specifically Order No. CA0038776 which states in Section III. Discharge Prohibitions:

A. Discharge of treated wastewater at a location or in a manner different from that described in this Order is prohibited.

B. The bypass of untreated or partially-treated wastewater to waters of the United States is prohibited.

C. Any sanitary sewer overflow that results in a discharge of untreated or partially-treated wastewater to waters of the United States is prohibited.

ii. Inadequate Reporting of Discharges

Full and complete reporting of SSOs is essential to gauging their impact upon public health and the environment. The Discharger's SSO Reports, which should reveal critical details about each of these SSOs, lack responses to specific questions that would present sufficient information to accurately assess and ensure these violations would not recur.

In addition, following a review of the SSO reports filed by the Discharger, River Watch's expert believes many of the SSOs reported by the Discharger as not reaching a surface water did in fact reach surface waters, and those reported as reaching surface waters did so in greater volume than stated. River Watch's expert also believes that a careful reading of the time when the SSO began, the time the Discharger received notification of the SSO, the time of its response, and the time at which the SSO ended, too often appear as unlikely estimations. For example:

April 07, 2018 (Event ID # 846274) – (Coordinates: 37.59591-122.50322) the spill start time and agency notification time are both reported as 05:17, the operator arrival time is reported at 00:00, and the estimated spill end time is reported at 07:01. The cause of the spill is reported as "Rainfall Exceeded Design."

March 13, 2016 (Event ID # 822870) – (Coordinates: 37.5958 -122.50346) the spill start time and agency notification time are both reported at 15:40, the operator arrival time is reported at 15:10 and estimated spill end time is reported at 17:04. The cause of the spill is reported as "flow exceeded capacity."

December 11, 2014 (Event ID # 811357) – (Coordinates: 37.59534 -122.50287) the spill start time, agency notification, and operator arrival are all reported at 10:42. The spill end time is reported as 00:00 on December 12, 2014. The cause of the spill is reported as "Rainfall exceeded design."

Given the unlikely accuracy of the times and intervals provided in these reports, it is difficult to consider the stated volumes as accurate. Without correctly reporting the spill start and end time, there is a danger that the duration and volume of a spill will be underestimated.

iii. Failure to Mitigate Impacts

River Watch contends the Discharger fails to adequately mitigate the impacts of its SSOs. The Discharger is a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ (“Statewide WDR”) governing the operation of sanitary sewer systems. The Statewide WDR requires the Discharger to take all feasible steps, and perform necessary remedial actions following the occurrence of an SSO including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site.

The EPA’s “*Report to Congress on the Impacts and Control of CSOs and SSOs*” (U.S. Environmental Protection Agency, Office of Water (2004)) identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous biological habitat areas exist within areas of the Discharger’s SSOs. Neighboring waterways include sensitive areas for the Western Snowy Plovers, steelhead trout, endangered San Francisco Garter Snake and the threatened California red-legged frog. River Watch finds no record of the Discharger performing any analysis of the impact of its SSOs on habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies containing biological habitat from the impacts of SSOs.

B. Sewer Collection System Subsurface Discharges Caused by Underground Exfiltration

It is a well-established fact that exfiltration caused by structural defects in a sewer collection system result in discharges to adjacent surface waters either directly or via underground hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage.

River Watch contends untreated or partially treated sewage is discharged from the Discharger’s collection system either directly or via hydrologically connected groundwater to surface waters including San Pedro Creek, Calera Creek, Pacifica State Beach and the Pacific Ocean. Due to SSOs, surface waters become contaminated with pollutants, including human pathogens. Chronic failures in the collection system pose a substantial threat to public health.

Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, and video inspection as well as testing of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from the Discharger is a violation of its NPDES Permit and thus the CWA.

C. Violations of Effluent Limitations

A review of the Discharger's Self-Monitoring Reports ("SMRs") identifies the following **Nine (9)** reported violations of effluent limitations imposed under NPDES Permit, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations - Discharge Point 001:

(12/11/2014) Total Suspended Solids (TSS), 1-Hour Average (Mean) limit is 20 mg/L and reported value was 46 mg/L at E-001. Event ID# 986951

(12/11/2014) Biochemical Oxygen Demand (BOD) (5-day @ 20 Deg. C) Daily Maximum limit is 20 mg/L and reported value was 92.8 mg/L at E-001. Event ID# 986952

(12/11/2014) Turbidity 1-Hour Average (Mean) limit is 10 NTU and reported value was 131 NTU at E-001. Event ID# 986953

(12/11/2014) Copper, Total Recoverable 1-Hour Average (Mean) limit is 15 ug/L and reported value was 37 ug/L at E-001. Event ID# 986954

(02/20/2017) TSS, Percent Removal Daily Minimum limit is 85% and reported value was 42.78% at E-001. Event ID# 1022259

(02/20/2017) BOD (5-day @ 20 Deg. C) Percent Removal Daily Minimum limit is 85% and reported value was 80.53% at E-001. Event ID# 1022260

(02/20/2017) TSS, Daily Maximum limit is 20 mg/L and reported value was 55.5 mg/L at E-001. Event ID# 1022261

(02/20/2017) Turbidity Daily Maximum limit is 10 NTU and reported value was 32 NTU at E-001. *** "MMP Exempt Reason: This is not a Group I or Group II Pollutant, and is therefore not a serious violation. Further, since this was the only occurrence within the 180 day period (WC 13385(I)(1), it does not require mandatory penalties)." Event ID# 1022262

(08/02/2017) Chronic Toxicity Daily Maximum limit is 1.0 TUc and reported value was 12.1 TUc at E-001. Event ID# 1032130.

D. Impacts to Beneficial Uses

Discharges in excess of effluent limitations, SSOs, and overwhelming already saturated irrigation fields cause prohibited pollution by unreasonably affecting beneficial uses of neighboring waterways.

The City of Pacifica is located about 12 miles south of San Francisco. Situated between Sweeney Ridge in the east, Montara Mountain to the south, and the bluffs of the Pacific Ocean rocky on the west, it's 6-mile stretch of coastal beaches and hills are a popular destination for both locals and tourists. Pacifica's Coastal Zone is part of 8 watersheds, some of which drain directly into the

Pacific Ocean. Others feed one of 5 creeks, including Calera Creek and San Pedro Creek, both waterways affected by the discharges described in this Notice.

The Facility is located near the mouth of Calera Creek, west of Highway 1. The lower reach of Calera Creek in the Coastal Zone was part of a significant restoration project implemented in 1997 and 1998 which included excavation of a new stream channel, restoration of 16 acres of wetlands and 12 acres of surrounding uplands. The restoration site receives additional tertiary-treated wastewater from the Facility adding approximately 3.6 million gallons per day (mgd) to the lower reach. The amount of flow generated by the Facility varies with rainfall and usage.

Calera Creek drains approximately 1,600 acres via two forks: a main channel to the north, and a smaller southern fork – Rockaway Creek. Land use is dominantly residential with some businesses along main roads. The contributing area of Calera Creek is altered along the valley bottom and near the mouth. Calera Creek is now perennial in the lower reach due to input from the Facility. The Creek is intermittent with residual pools above the Facility's discharge point, and is habitat for the threatened California Red-Legged Frog and endangered San Francisco Garter Snake.

San Pedro Creek is a perennial stream running from the Santa Cruz Mountains through the San Pedro Valley to its mouth at Pacifica State Beach. It drains a 5,114-acre basin and is composed of 5 main tributaries that delineate 7 sub-watersheds. The Creek has 4 major forks: the North, Middle, South, and Sanchez. The San Pedro Creek watershed is bordered by the Pacific Ocean to the northwest and by mountains on the 3 remaining sides. Pacific Coast Highway crosses the watershed at its northwestern edge. Urban development covers most of the valley floor extending up onto some hillsides. The watershed is approximately 33% developed (residential, commercial, mixed urban or build-up, and other urban or built-up). Open areas and parklands in and around the watershed harbor wildlife such as deer, bobcat, fox, and turkey vultures. San Pedro Creek provides the only good habitat for a native steelhead population between San Francisco and Half Moon Bay.

Pacifica State Beach is the southernmost of Pacifica's beaches, winding 0.75 miles long in a crescent shape at the mouth of the San Pedro Valley in downtown Pacifica off the Pacific Coast Highway. Though technically a State Beach, it is operated by the City of Pacifica as a public park. Pacifica State Beach marks the northern gateway to the coastline stretching south of San Francisco and is widely regarded as the best beach for both surfing and kayaking in the Bay Area. It is frequently referred to as Linda Mar Beach because it fronts the Linda Mar subdivision. Pacifica State Beach provides habitat for the Western Snowy Plover, a shorebird designated as Threatened under the Endangered Species Act. Pacifica State Beach and San Pedro Creek are listed as impaired water bodies under CWA § 303(d) due to high indicator bacteria levels.

River Watch is understandably concerned as to the effects of both surface and underground exceedances of the NPDES Permit limitations to beneficial uses applicable to San Pedro Creek, Calera Creek, Pacifica State Beach, and the Pacific Ocean as well as the impacts of SSOs in and around the diverse and sensitive ecosystem of the Facility and the locations where sewage spills from the Discharger's collection system have occurred.

3. The Person or Persons Responsible for the Alleged Violation

The entity responsible for the alleged violations identified in this Notice is the City of Pacifica, as owner and operator of the Calera Creek Water Recycling Plant and its associated collection system, as well as those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. The Location of the Alleged Violation

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the Discharger which relate to its ownership and operation of the Facility and associated sewer collection system as described in this Notice.

The Discharger owns and operates the Facility, a publicly-owned treatment works, and its associated collection system. The Facility provides advanced-secondary treatment of domestic and commercial wastewater collected from its service area and discharges to Calera Creek. The Facility currently serves a population of approximately 39,000. The collection system consists of 82 miles of gravity sewers, 50 miles of public laterals, 4.2 miles of force mains and 5 pump stations with a total pumping capacity of 34,000 gallons per minute. In addition, there are an estimated 3,500 private sewer laterals in the San Pedro Creek watershed. The sewer laterals in the older neighborhoods of the lower San Pedro Creek Valley are constructed of tarpaper-like materials more than 50 years old. The Facility can provide advanced-secondary treatment for an average daily dry weather design flow of 4.0 mgd and a peak wet weather discharge capacity to Calera Creek of 20 mgd. In 2016, the average daily dry weather flow was 1.9 mgd.

Wastewater flows by gravity to the Sharp Park and Linda Mar pump stations where it is screened to remove inorganic objects then pumped to the Facility. The first stage of treatment at the Facility is a vortex chamber separating grit from the sewage. The influent then goes to the sequencing batch reactors basins – a combination of primary and secondary treatment and nutrient removal. The sludge left over from this process is pumped to a biosolids holding tank, and then thickened and pumped into the digesters. In the digesters, the ATAD organisms live at a high temperature which kills bacteria and other organisms found in sewage. After the sludge settles to the bottom of the basins, water is drawn out from the middle and drained to the filters. Passage through sand filters removes any remaining particles. The water then passes through the UV disinfection channel and is discharged into the environment via Calera Creek.

The first of 2 treatment areas is the treatment swales associated with the Anza Storm Drain Pump Station along Highway 1 north of Pacifica State Beach extending to Crespi Drive. The second is the Linda Mar Storm Drainage Pump station where water is pumped from the Linda Mar wet well into a storm water treatment swale surrounding the pump station. Another feature links both the Linda Mar and Anza Pump Station wet wells together, such that diversion flows from both drainage sheds can go to either and/or both of the treatment wetlands. Water which would normally be discharged onto the beach is pumped into a treatment swale from this pump station wet well and thus diverted from beach discharge during low flow and first flush situations.

5. Reasonable Range of Dates During Which the Alleged Activity Occurred

The range of dates covered by this Notice is February 01, 2014 through February 01, 2019. This Notice also includes all violations of the CWA by the Discharger which occur during and after this Notice period up to and including the time of trial.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving notice is California River Watch, referred to throughout this Supplemental Notice as "River Watch," an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 South Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to Attorney Jack Silver.

RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with the Discharger and its staff to tailor remedial measures to the specific operation of the Facility and associated sewage collection system. In advance of that conversation, River Watch identifies the following set of remedial measures that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns:

1. Determining the specific sewer collection system repairs required, and establishing deadlines for compliance.
2. Requiring implementation of an effective SSO reporting and response program.
3. Providing a lateral inspection and repair program.
4. Ensuring application of chemical root control complies with federal EPA or the RWQCB-SF as well as manufacturer and Cal-OSHA requirements.
5. Keeping the Sewer System Management Plan for the Facility up-to-date and properly certified.
6. Promoting staff training and education.

CONCLUSION

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, swimming, fishing, hiking, photography or nature walks. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$54,833.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a 60-day "notice period" to promote resolution of disputes. River Watch encourages the Discharger to contact counsel for River Watch within 20 days after receipt of this Notice to initiate a discussion regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,



Jack Silver

JS:lhv

Service List

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